



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04379/2018

THE IMMIGRATION ACTS

Heard at Glasgow  
on 11 July 2019

Decision & Reasons Promulgated  
On 17 July 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**M H**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr U Aslam, of McGlashan MacKay, Solicitors  
For the Respondent: Mr Diwyncz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant first sought asylum in the UK on 31 July 2007. That claim was unsuccessfully exhausted in various proceedings. He made further representations on 12 September 2017, saying he had nothing to add to his previous claim, but would be at risk because he has converted from Islam to Christianity.
2. The respondent rejected the claim on 8 March 2018, declining to accept that the appellant had “genuinely converted”, or that he would evangelise on return (paragraph 34).

3. FtT Judge Buchanan dismissed the appellant's appeal to the FtT by a decision promulgated on 15 May 2018, finding at paragraph 8.38 that "... the appellant's involvement in Christianity is not by reason of any true faith, but is founded on a desire to remain in the UK."
4. By a decision dated 18 June 2018, FtT Judge Keane declined to extend time for applying for permission to appeal to the UT, and did not admit the application.
5. By a decision dated 20 September 2018, UT Judge Rintoul extended time and admitted the application for permission, but refused permission.
6. The appellant sought judicial review of the decision of 20 September 2018, founding on *TF and MA v SSHD* [2018] CSIH 58, dated 30 August 2018, which of course had not been available to the FtT. Counsel for the parties entered into a joint minute:

“...  
2. They consider that the UT ... erred in law in failing to adequately consider the ... ground of appeal relating to the treatment of the evidence of Reverend Margaret Johnston.  
3. They consider that there are compelling reasons to interfere with the decision of the UT ... in light of ... *TF and MA* ... Where the decision of the UT is inconsistent with an authority of a higher court (*TF and MA*) this constitutes a compelling reason for the Court to interfere ...”
7. The Court accordingly reduced the decision of the UT.
8. By a decision dated 22 May 2019, the Vice President of the UT granted permission to appeal to the UT, in light of the Court's interlocutor and of the joint minute.
9. Mr Aslam submitted that the FtT erred in law, and that its decision should be set aside and the case should be remitted for fresh hearing.
10. Mr Diwyncz submitted that the FtT was entitled to conclude that the appellant's apparent conversion was not sincere, and while that was often a difficult matter to determine, the grounds of appeal were only disagreement with factual findings, and did not show error on any point of law.
11. Mr Aslam in reply said that the FtT did not analyse the evidence of Reverend Johnston in the way required by *TF and MA*.
12. I reserved my decision.
13. The submission of Mr Diwyncz is plausible, as far as it goes, but difficult to reconcile with the position taken by the respondent in the Court, and he did not attempt to show that the decision of the FtT is consistent with *TF and MA*.

14. I find that the FtT's approach to the independent evidence of a church witness, by reference to the later authority of *TF and MA*, erred in such a way that its decision falls to be set aside.
15. The decision of the FtT stands only as a record of what was said at the hearing. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Buchanan.
16. The appellant's representatives have indicated that they "intend to rely upon the Church of Scotland Act 1921", apparently to re-run an argument which was rejected by the FtT. Parties should be aware of an unreported decision of the UT. As such, it is of course not binding, but it may be permissible to refer to it. The case is readily available on the tribunal website, PA/07454/2017, promulgated on 13 December 2018.
17. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



12 July 2019  
UT Judge Macleman